SUPREME COURT OF THE UNITED STATES.

No. 145.

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMER NINA SIMMES.

WRIT OF CERTIORARI AND RETURN.

1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the circuit court of the United States for the eastern district of Louisiana, greeting:

Whereas, in a certain cause in said circuit court, between the United States, libellants, and the steamer Nina Simmes, her tackle, apparel, &c., respondents, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, an error in the record and proceedings of said cause has been suggested, to wit:

"That a mistake of a material character has been made by the clerk of the court below, in copying the testimony of I. I. Comann, a witness whose testimony was read in the trial, which mistake consists in writing down as if the said Comann had testified in speaking of the captain of the said steamboat Nina Simmes, Roberts, that "he," Captain Roberts, "always told me that he would be glad to see his boat used by the confederate government;" whereas, no such language or paragraph appears in the original deposition, from which the copy of the testimony in the transcript of the record now on file in this court was made."

2 You, therefore, are hereby commanded that, searching the records and proceedings in said cause, you certify what omissions and errors you shall find, to the Supreme Court of the United

States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, A. D. 1866.

D. W. MIDDLETON,
Clerk Sup. Court United States.

Issued 3d day of May, 1867.

Endorsed: Supreme Court U. S., 1866, Dec. term, No. 317. The U. S. app'ts, *vs.* Steamer "Nina Simmes," &c. Writ of certiorari.

3 Circuit court of the United States, fifth circuit and district of Louisiana, April term, A. D. 1867.

NEW ORLEANS,
Fourteenth day of May, 1867.

Court met pursuant to adjournment.
Present, the Honorable E. H. Durell, district judge.
Absent, the Honorable I. M. Wayne, presiding judge.

UNITED STATES
vs.
STR. NINA SIMMES. } No. 3,599.

On motion of Hornor and Benedict, atty's for defendant, and on suggesting to the court the annexed writ of certiorari, from the honorable the Supreme Court of the United States, in the above-entitled and numbered suit, and therein pending on appeal by the libellant from a decree of this honorable court, and on suggesting the order therein contained, it is ordered that the clerk of this court do search the records and proceedings in said cause, and that he shall certify what errors he shall find to the said Supreme Court of the United States, and that he have the same, together with this writ, before the said Supreme Court forthwith, and according to law.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this fourteenth day of May, 1867.

D. URBAN, *Clerk.*

Endorsed: No. 3,599. Circuit court of the United States. United States *vs.* The Steamer Nina Simmes, &c. Copy of order.

4 To the honorable the Supreme Court of the United States of America:

In obedience to the annexed writ of certiorari, this day served upon me, and agreeably to the order of the hon. the circuit court of the

U. S. district of La., a copy whereof is also annexed, I respectfully report and certify, that I have searched the record and proceedings in the case of the U. S. *vs.* the st'b't Nina Simmes, No. 3,599, of the docket, and now pending on appeal in your honorable court, and after a careful examination, find that the witness, I. I. Comann, nowheres testifies, in speaking of the captain of said steamboat Nina Simmes, Roberts, that "he," Captain Roberts, "always told me he would be glad to see his boat used by the confederate government."

And in order to place the matter beyond any possible doubt, I have thought proper to copy in full the testimony of said witness, from the original deposition on file and of record in the cause, which is as follows:

I. I. Comann, a witness for claimants, being duly sworn,
5 deposes and says: I was purser on board the Nina Simmes during the whole time that Capt. Boardman was on her, as captain and pilot. The confederate government had control of the Nina Simmes during the whole of that time, with the exception of about one month, when I first went on board. She was used by the confederate authorities without the consent of Capt. Roberts; he opposed her being used by them. Capt. Roberts appeared to be in very bad humor to see his boat used by the confederate government. He always told me that he would be glad to see his boat out of the confederacy, and if he could run the blockade, he would do so. This he told me confidentially. If he had said so outside, I know not what the consequences would have been. I suppose if he had been caught attempting to run the blockade, he would have been hung. I was purser of the boat when he was arrested for refusing to raise steam in time, when ordered so to do. He was arrested at Alexandria, by Capt. or Major Lery, of General Taylor's staff, I think. The absence of docks and other conveniences for repairing boats in the confederacy, caused them to be injured very rapidly when in use.
6 confederate money was of no use to the owners of the boat after they had earned it; they paid off the hands with it, but could not invest it. They could also buy provisions, fuel, &c., with it, but at very high prices.

Cross-examined:

All I know with regard to the objections of Capt. Roberts to have his boat used by the confederate authorities, as I mentioned before, is from what Capt. Roberts told me, and from what he said to others in my presence. He so spoke to travellers on the boat. I do not remember their names.

I often was present when he so spoke to his friends and to others.

Munitions of war, commissary stores, quartermaster's stores, arms, troops, &c., belonging to the confederate government, were carried by the Nina Simmes during the years 1863, 1864, and 1865. Capt. Roberts paid me for my services on board of the boat. He paid me something. I, as purser, paid the hands by order of Capt. Roberts.

As purser I received five hundred dollars a month for the use of the boat. I rec'd the same from the confederate authorities. I

7 never received more than twelve thousand dollars from said authorities during the whole time I was on board.

Capt. Roberts resides in New Orleans; this has been his home for many years. It was his home before the war. When Capt. Roberts bought the Nina Simmes, she was sunk; her owner had bored a hole in her and sunk her. I heard so from Capt. Roberts and others. She was sunk in the Alabama bayou.

(Sig) I. I. COMANN.

Sworn to and subscribed before me, this 18 Sept., 1865.

(Sig) CHS. CLAIBORNE,
U. S. Com.

Therefore, it will be seen that the passage objected to does not exist in the original, and that the clerk who copied the said testimony has committed a grave error.

Clerk's Office, May 15, 1867.

[L. S.] D. URBAN, *Clerk*,
Successor in office to Ch's Claiborne, late Clerk C. C. Dist. of La.

Endorsed: Supreme Court U. S., 1866, December term, No. 145. The United States *vs.* app'ts, the steamer "Nina Simmes." Writ of certiorari and return. Filed 21st May, 1867.

Supreme Court of the United States.

No. 145.

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMBOAT NINA SIMMES, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF LOUISIANA.

BRIEF OF COUNSEL OF CLAIMANTS AND APPELLEES.

The steamboat Nina Simmes was libelled on the 23d June, 1865, in the circuit court of Louisiana, under the act of August 6, 1861. (12 Statutes at Large, p. 319; see Record, pp. 1 to 3.)

The fourth article of the libel is the only one at all applicable to the case. (See p. 2.)

The answer of the owners denies that the boat was ever used by the rebels with his consent, and avers that such use was against his consent and effected under duress. (See Record, pp. 5 and 6.

The court below gave judgment dismissing the libel and restoring the boat, (see Record, p. 28,) and the United States have appealed.

POINTS.

1. The testimony of Thomas S. Airy, (Rec., pp. 12 and 13,) and of John C. Marsh, (Rec., pp. 13 and 14,) shows certainly that the boat was engaged in carrying rebel stores and troops on Red River.

2. But this is shown clearly to have been a service rendered under compulsion. The testimony of the claimants is conclusive on this point.

The testimony of Worley, (Rec., p. 14,) shows that the boat was taken possession of by an armed rebel force.

So the testimony of Boardman (Rec., p. 16) shows the same force.

Respectfully submitted.

THOMAS J. DURANT,
For Appellees.